

From: DH Walker
To: Microsoft ATR
Date: 1/23/02 3:10pm
Subject: Microsoft Settlement

The proposed settlement is an outrageous sellout engineered for the benefit of a convicted monopolist and against the interests of computer users and America's technological future. Please reject it and require a settlement that actually addresses the facts found in the District court case.

The US Court of Appeals unanimously agreed that Microsoft had illegally kept its monopoly position by preying on other software developers and computer manufacturers. Microsoft operated illegally and greatly benefited from its illegal behavior. The proposed settlement does nothing to punish Microsoft for its past illegal behavior, nor to effectively discourage further illegal activity in the future.

Microsoft has already shown that it has learned nothing from the findings against it. To take just one small example, look at the millions of dollars of development effort in their Media Player, which is unnecessarily "integrated" into WindowsXP - and is targeted at the RealPlayer product line, in order to crush it, in the same way they did the Netscape Browser. Microsoft, unlike its competitors, simply rolls the development cost into their illegally obtained monopoly operating system, and undercuts the competition unfairly. Yet the proposed settlement does not address preventing this sort of monopolistic behavior at all. Remember, developing a media player, a browser and other software costs money, and Microsoft leverages their monopoly to mask these costs while smashing competition unfairly. The Circuit court in its 7-0 decision upheld lower courts in finding this "bundling" illegal and monopolistic, yet the settlement does not address this in any meaningful fashion: it allows Microsoft to tightly integrate and bundle its media player, its web browser, and myriad other applications into the Windows Operating System, instead of competing freely against external applications.

Also, the proposed settlement contains no provisions to remedy the unlawful monopolization of the operating system; nothing that will produce competition. Remember that the Circuit court ordered that a remedy must "unfetter the market from anticompetitive conduct... [and] .. terminate the illegal monopoly". the proposed settlement does nothing of the sort. Its attempt to open the "API" (programming interface) of the Windows operating system will merely reinforce the monopoly, not terminate it as the court called for. Also opening the API is not enough: Microsoft plans only to open a mere a subset. Complete and full disclosure of ALL the source-code is the only "opening" that would suffice to terminate the Microsoft monopoly.

Finally, the proposed settlement does nothing at all to address the issue of effective remedy alongside enforcement. The proposed penalties are so ridiculous that they call into question the integrity of the DoJ and the states that agreed to them. An extension of terms that they have already violated is hardly a punishment. Fiduciary penalties must be applied, as well as structural ones. Also, the solutions proposed for "competition" are heavily dependent upon Original Equipment Manufacturers for implementation - the same OEMs who are partners and part of Microsoft's business plans (Such as Dell and Compaq).

The propaganda effort from Microsoft and its allies has been to treat this case as just another instance of government intervention in the private sector. In reality, the outcome will be pivotal in shaping American society for decades to come. Computer technology runs not just our desktop computers, the Internet and our communications system -- it is rapidly becoming integrated into every aspect of life, from cellphones to news and entertainment systems to household appliances. The outcome of this case will determine whether the promise of breathtaking new technology is fulfilled and available to all, in the process keeps America at the cutting edge of development, or whether the promise fails because one company is allowed to keep stifling innovation as a means of holding onto its ill-gotten power.

The proposed settlement is so inadequate as to be an obscenity. It should be rejected and the DoJ and the States directed to follow the rulings of the Circuit Court and lower courts instead of ignoring the findings of fact and law, and currying favor with unrepentant monopolist outlaws.

An awesome decision has fallen to you. I trust you will vote for the future and for America.

Sincerely,

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